

Meeting summary
Citizen Trade Policy Commission
Wednesday, September 19, 2012
Room 220, Cross State Office Building

Committee members present: Senator Roger Sherman, Senator John Martin, Representative Joyce Maker, Representative Bernie L.A. Ayotte, Representative Peggy Rotundo, Stephen Cole, Michael Herz, Joseph Woodbury, Jay Wadleigh, Linda Pistner.

The meeting began at 1:20pm and after introductions the commission held a conference call with Nora Todd from Congressman Michaud's office to discuss Representative Michaud's comments on recent letters from CTPC regarding the developing Transpacific Partnership agreement and how it may address tobacco, pharmaceuticals, government procurement and country of origin labeling.

Nora Todd (by phone) from Congressman Michaud's office

Ms. Todd stated that Congressman Michaud focuses on trade and Maine workers whose livelihoods are often at stake due to trade agreements. She noted that Congressman Michaud believes it is critical that the Trans-Pacific Partnership Agreement (TPPA) addresses tariffs on imports from Vietnam. Lower labor and environmental standards in some countries, like Vietnam, will disadvantage U.S. companies.

Concerned about manufacturing in the U.S. and Maine in particular, Ms. Todd noted that Representative Michaud sent a letter to the USTR stressing how critical it is to identify specific provisions that directly impact the U.S. manufacturing sector in trade agreements. She stated that the letter encouraged tight currency controls to prohibit the manipulation of currency by countries with whom we engage in trade. According to Ms. Todd, the letter noted that trade agreements should always include provisions that ensure no foreign "state run" company can come to the U.S. and disadvantage U.S. companies by competing on unfair terms. "Rules of origin" provisions pertaining to manufactured and assembled goods in trade agreements must also be carefully negotiated according to Ms. Todd and the letter sent to the USTR. According to Ms. Todd, the letter also urges accessible remedies when trade agreements are violated.

In response to the issues the CTPC raised in the letters sent to Representative Michaud in August, 2012, Representative Michaud feels the agreement shouldn't undermine the state's ability to negotiate. While other leaders in Congress are taking charge of pharmaceuticals, Representative Michaud supports protecting Maine's ability to get low priced pharmaceuticals. Regarding procurement.

Ms. Todd said that Jean Grier, who was speaking to the CTPC later in the meeting, would be a good resource on any questions the CTPC may have on TPPA provision regarding procurement. Representative Michaud's office is of the understanding that the TPPA will deal with federal procurement, not state procurement.

Ms. Todd said that Representative Michaud's office is staying informed about trade agreements and how they relate to tobacco and country-of-origin labeling. Representative Michaud does not

think the TPPA should undermine a state or country's efforts to quell tobacco use. He also agrees with the CTPC's opinion stated in its letter to him on country-of-origin labeling, but he is not sure to what extent this will apply to the TPPA.

Stephen Cole asked if Congressional staff show up at negotiations, or if they just get information from the USTR? Are they invited or allowed to attend? Ms. Todd responded that Congressional staff members are invited to stakeholder events, which are informative, but they do not allow for a lot of back and forth. They do receive regular information and briefings from the USTR. Representative Michaud's office also talks to stakeholders and industry representatives to try and to get information beyond that from the USTR.

Mike Herz stated that he had heard about a letter from Senator Ron Wyden to ensure stronger environmental laws in the treaty and asked Ms. Todd if Representative Michaud's office was familiar with the letter and if Representative Michaud was interested in environmental issues. Ms. Todd doesn't think the letter made it to the House; the House and Senate don't typically sign the same letter. Representative Michaud focuses more on manufacturing so he may not be a target to sign an environmental letter. Ms. Todd said she is happy to look for the letter or see if something can get started.

In regards to transparency issues on the negotiating text and negotiating process, Representative Michaud was one of one hundred members of Congress who signed letter to have increased transparency and more Congressional involvement in negotiations and updates on what's happening in trade negotiations. The leaders on the transparency issue in Congress include Representative Rosa DeLauro from Connecticut and Representative George Miller from California.

Ms. Todd said that Representative Michaud is able to see the text the U.S. has tabled on specific chapters and can see any of those chapters. Ms. Todd said that it is unfortunate there is not more transparency, but Representative Michaud is still trying to be as informed as possible. He's having as many conversations as possible and doing as much as he's allowed to do to weigh in. Ms. Todd shares the CTPC's frustrations on the transparency issue.

Danielle Fox asked whether revisions to the General Agreement of Procurement (GPA) in the WTO regarding procurement might include sub-levels of government. Ms. Todd responded that there are ongoing efforts to amend that provision. She noted that the European Union, in particular, is putting pressure on these amendments because they want greater access to procurement markets in the U.S. Ms. Todd does not feel Congress will ratify these types of changes. The general rules on procurement that give states the option to participate could be changed – which would be concerning.

Ms. Todd said she wants to be as responsive as possible and would like to have an ongoing dialog with the CTPC. She would like people to email her if anybody would like to follow up on a particular topic. She would like to be a resource to the Commission and said that Congressman Michaud appreciates all the work the CTPC does.

Representative Sharon Treat, Maine's IGPAC member briefed the CTPC on the latest in TPPA negotiations.

Representative Sharon Treat briefed the Commission on the latest TPP negotiations in Leesburg, Virginia, which she attended in September and provided an overview of the presentation she made there.

The negotiation format in Virginia allowed for participants to set up tables and present to negotiators – similar to a trade show format. Rep. Treat indicated that there was some disappointment because the presentation schedule ran at the same time as the trade show table format portion and it was difficult to present and cover the table at same time. Representative Treat attended for several days and met with several key people negotiating the TPPA. She shared the letters the CTPC sent out in August so that people would see that an organization of elected officials, the executive branch, nonprofits and business may have opinions that can at times be different than those of the USTR. Rep. Treat indicated that here presentation was based on the recently completed biannual CTPC assessment.

Representative Treat said that provisions pertaining to state-owned enterprises are of interest in the TPPA and that the CTPC should pay close attention to developing negotiations in this area. Other elements of the TPPA that were receiving a lot of interest from those following the negotiations include: intellectual property rights, transparency in pharmaceutical pricing; labor standards and environmental protection provisions.

Representative Treat said it is unclear from Ms. Todd's comments on procurement whether the states will still have the ability to opt out of agreements. There is talk of the TPPA as a "living agreement" so things could change.

Representative Treat said that the TPPA could impact sanitary and phyto-sanitary measures as they relate to regulations to promote food safety and general protections of the public health. Provisions in the TPPA could result in allegations of trade violations against the U.S. since our sanitary and phyto-sanitary measures are set at a higher standard than many other countries party to the treaty.

Representative Ayotte asked why negotiations are held behind closed doors. Representative Treat said the attitude is that negotiators can't talk about trade negotiations in public and come to an agreement. She thinks it's possible to have some kind of public participation and still deal with the confidentiality issue.

Representative Treat said that Canada and Mexico will join in on the TPPA discussions in December and the issues will get more complicated, including the issue of sub-federal versus federal. In Canada, there is more consultation with provinces and the federal government than there is between U.S. states and the federal government. There may be opportunities for discussion with provinces to see if they have commonalities with Maine.

Jean Grier (by phone), Chief Procurement Negotiator, USTR

Jean Grier joined the commission by telephone to discuss the letters sent to the USTR regarding the CTPC assessment and to respond to questions regarding the development of procurement provisions in the TPPA. One concern mentioned in the letter the CTPC sent to Ms. Grier was if state procurement would be in the TPPA, and the hope that states be consulted if it is an issue. Ms. Grier assured the Commission that negotiators plan to take up the issue of outreach to states under the TPPA. She stated that the USTR will continue the practice of consulting with the states on whether they want their procurement practices governed under the agreement, just like with previous free trade agreements. When asked how this consultation process will be facilitated, Ms. Grier noted that Ambassador Kirk will send a letter to the governor of each state.

Representative Rotundo said she had heard that only federal procurement is bound by TPPA and that state procurement would be excluded, and asked Ms. Grier for clarification on that point. Ms. Grier said that other countries are interested in sub-federal procurement. Negotiators have not yet reached agreement on whether procurement will go below the federal/central level, though negotiators want the U.S. to have good access to federal procurement in other countries. Ms. Grier said the current focus is on federal procurement. This is the first time some countries have dealt with federal/central procurement.

Jay Wadleigh asked Ms. Grier about the Davis-Bacon Act, regarding prevailing wages on projects. In the TPPA, would a low bidder override the Davis-Bacon Act? Ms. Grier said that the Davis-Bacon Act does not affect how bids are evaluated and that there are two ways to do a bid. If cost is the only factor, then the lowest bid will win. When looking for the most advantageous bid, which happens frequently, cost and quality are both factors. The Davis-Bacon Act is not affected, according to Ms. Grier.

Representative Rotundo asked Ms. Grier about a state's ability to opt in and opt out on procurement. Representative Rotundo is concerned about protecting a state's capacity to make its own decisions. Ms. Grier said that it is in the state's hands whether it opts in or out and that practice is not going to change. She said treaties will continue to honor the "opt in or opt out" and the TPPA will not affect any other past or current agreements. If a state opts in, it can decide what procurement it wants to cover. Ms. Grier said the threshold is set at \$500,000 at the state level and she doesn't see this number decreasing, but if did, states would be consulted.

Representative Rotundo asked if the TPPA would bind states considering Ms. Grier had referred to the TPPA as a 'living document.' Representative Rotundo asked if it was possible that something could go in the TPPA years from now and bind the states on procurement even though states aren't currently bound. Ms. Grier said that states could not be bound without the state's authorization. Allowing states to opt in or opt out is an established practice that goes back to early 90's. Representative Rotundo asked what would happen if changes were made to procurement in the WTO? Ms. Grier said that they just made changes to the WTO and it didn't affect state procurements even though trading partners wanted it to happen. Ms. Grier said that just because an agreement is revised doesn't mean that states will be added without their permission. Ms. Grier also said they would adhere to the Berry amendment to the military. When asked if U.S. environmental and labor standards would be enforceable in the TPPA so products can be certified sweat-free, Ms. Grier said she couldn't answer the question because she can't discuss what's in the actual text.

Commission discussion after presentations and phone calls

- Representative Treat said that it would be good to put something in writing to Ms. Grier to memorialize that she said states would have the option to opt in or opt out and that won't change in the TPPA.
- Since the Commission didn't receive any letters in response to the letters they sent out in August, it was suggested that the Commission invite people to respond by phone like Nora Todd and Jean Grier at this meeting. It's a great way to get a response and more information.
- Representative Rotundo noted the certainty with which Jean Grier affirmed things regarding procurement. Representative Rotundo suggested that a letter memorializing what Grier said is a great idea. The Commission agreed with this suggestion and decided unanimously to send such a letter to Ms. Grier

Danielle Fox briefly summarized major points that came up during the phone calls.

- With regard to TPP and procurement, Jean Grier said that they will seek input from states on sub-federal procurement.
- The changes the USTR agreed to on the WTO do not include sub-federal level procurement changes, just federal level.
- The Berry amendment is something negotiators feel strongly about and will incorporate as they move forward.

Representative Ayotte asked who makes the final decision on procurement? Several commission members responded that it is the state who makes the final decision on whether to be a party to the procurement provisions in trade agreements based on recent practice by the USTR seeking that input from the states. Rep. Ayotte added that he believed it is important, in the context of Maine, that we get to make decisions as a state on what we spend our taxpayer's money with regard to procurement.

Representative Rotundo reminded the Commission that consultation with Maine means a vote of the full Legislature as well. She also said that in order to help educate the Commission on complex trade issues, it might be good for Representative Treat to give the presentation she gave in Virginia at the next meeting.

There was discussion of having the next meeting, which will include a public hearing, in Skowhegan. This site was discussed because of its proximity to the New Balance factory in Norridgewock and because of the attention paid to the area by USTR Ambassador Ron Kirk during a recent visit. Commission members had a general discussion about whether this visit by Ambassador Kirk was a positive development for the shoe factory or whether it was a way of gently letting the region know that their concerns about tariffs and unfair competition from Vietnam shoe exports are well-founded. Representative Maker said she was disappointed that neither the Commission nor Representative Treat, as a member of IGPAC who happens to be from Maine, were invited when Ambassador Kirk visited the Norridgewock factory.

Planning for the next meeting.

The Commission discussed the location of the next meeting and it was decided that of the three towns in Maine where New Balance has factories, the meeting should be held at the one in Skowhegan. Staff will email the Commission to determine a date for the meeting and hearing. Representative Treat could do a general trade presentation in the afternoon and the public hearing could be in the evening, perhaps later in October.